APPENDIX A

IN THE UNITED STATES COURT OF APPEALS

FOR THE SEVENTH CIRCUIT

No. 97-3879

CHRYSLER CORPORATION,

Plaintiff-Appellant,

v.

KOLOSSO AUTO SALES, INC.

Defendant-Appellee.

On Appeal from the United States District Court
for the Eastern District of Wisconsin
Hon. Rudolph T. Randa

Argued April 24, 1998 — Decided July 23, 1998

Before POSNER, Chief Judge, and ROVNER and DIANE P. WOOD, Circuit Judges.

POSNER, Chief Judge.

A clause in Chrysler's franchise contract with one of its dealers, Kolosso Auto Sales, forbids Kolosso to change the location of the dealership from the address in Appleton, Wisconsin specified in the contract unless it gets Chrysler's written permission. The contract was made in 1988, at a time when the Wisconsin Motor Vehicle Dealers Law, Wis. Stat. § 218.01, did not expressly limit an auto manufacturer's right to include such a provision in a dealership contract. But in 1993 the legislature enacted and made applicable to existing as well as to new contracts an amendment to the Motor Vehicle Dealers Law that entitles a dealer to challenge a manufacturer's refusal to permit him to move his dealer-

ship. Wis. Stat. § 218.01(3x). Such a challenge requires the state administrative agency that administers the law to determine whether there is "good cause" for the move. In making this determination the agency

> may consider any relevant factor including:
>
> a. The reasons for the proposed action.
>
> b. The ... reasons for not approving the proposed action.
>
> c. The degree to which the inability to undertake the proposed action will have a substantial and adverse effect upon the motor vehicle dealer's investment or return on investment.
>
> d. Whether the proposed action is in the public interest.
>
> e. The degree to which the proposed action will interfere with the orderly and profitable distribution of products by the [manufacturer].
>
> f. The impact of the proposed action on other motor vehicle dealers.

Wis. Stat. § 218.01(3x)(c).

In 1995, Kolosso informed Chrysler that it wanted to move the dealership to another address in Appleton in order to enable it to consolidate the service facilities of its Chrysler dealership with the service facilities of a Toyota dealership that it owned at that address. Chrysler refused to authorize the move. Kolosso filed a challenge with the state agency. Chrysler responded with the present suit, which seeks to enjoin Kolosso from moving and to declare section 218.01(3x) invalid under the clause of the U.S. Constitution that forbids a state to impair the obligation of contracts. Art. I, § 10, cl. 1. The district court rejected the constitutional claim and granted summary judgment for the dealer.

The administrative proceeding has been stayed pending the outcome of Chrysler's appeal, rather than this appeal being stayed pending the outcome of the administrative procedure. This sequencing does not violate principles of abstention or of exhaustion of remedies. Chrysler claims that forcing it to undergo the ordeal of an administrative proceeding would itself impair its rights under the dealership contract, which gave Chrysler a unilateral, unreviewable right to insist that the dealer stay at the location specified in the contract. Against the cost and uncertainty of the administrative process, the administrative procedure and judicial review of it obviously provide no remedy, so neither abstention nor exhaustion is required. *McCarthy v. Madigan*, 503 U.S. 140, 147, 112 S.Ct. 1081, 117 L.Ed.2d 291 (1992); *Planned Parenthood of Dutchess-Ulster, Inc. v. Steinhaus*, 60 F.3d 122, 126 (2d Cir.1995); *Privitera v. California Board of Medical Quality Assurance*, 926 F.2d 890, 895-96 (9th Cir.1991).

If the contracts clause of the Constitution were read literally, Chrysler would win hands down. It had a contract that obligated the dealer to stay put if Chrysler wanted him to, and the state relieved the dealer of the obligation. Not completely, for it was (and is) possible that Chrysler would persuade the agency that administers the dealership law that it has good cause to forbid this dealer to relocate. But as every employer and employee knows, there is a big difference between having a right (to terminate an employee, or in this case to control a dealer's location) and having a right that depends on showing that there is good cause for its exercise. If the Wisconsin legislature all of a sudden provided that no "at will" contract of employment could be terminated by the employer without good cause, and made the new law applicable to existing employment contracts, this would be a nontrivial impairment of contractual entitlements.

It has been a long time, however, since the contracts clause was interpreted literally. Compare *Ogden v. Saunders*,

25 U.S. (12 Wheat.) 213, 223-24, 6 L.Ed. 606 (1827), and *United States ex rel. Von Hoffman v. Quincy*, 4 Wall. 535, 71 U.S. 535, 550-53, 18 L.Ed. 403 (1867), with *Antoni v. Greenhow*, 107 U.S. 769, 775, 2 S.Ct. 91, 27 L.Ed. 468 (1883), and *Home Building & Loan Ass'n v. Blaisdell*, 290 U.S. 398, 428, 54 S.Ct. 231, 78 L.Ed. 413 (1934). The concern that appears to have animated the progressive relaxation of the clause is that a literal interpretation, like a literal interpretation of other unqualified clauses in the Constitution—notably the free-speech clause, with its flat statement that Congress shall make no law abridging freedom of speech or of the press—might disable government from dealing with emergencies. See *id.* at 425-28, 54 S.Ct. 231. An example is the acute shortage of housing in New York City during World War I, which led the state to enact a law, upheld by the Supreme Court against challenge under the contracts clause, extending residential leases in the City beyond their contractually specified expiration date. *Marcus Brown Holding Co. v. Feldman*, 256 U.S. 170, 41 S.Ct. 465, 65 L.Ed. 877 (1921) (Holmes, J.).

Concern about the paralyzing effect of the literal interpretation may be misplaced, or at least exaggerated. The state in the *Marcus Brown* case could have used its eminent-domain power to extend the leases; and this example shows that the consequences of a literal interpretation of the contracts clause would not be so apocalyptic as those of a literal interpretation of the First Amendment. But they would not be trivial, fiscal issues to one side. The literal interpretation would impede governmental efforts to regulate for the future, by grandfathering economic rights that would give their holders a competitive advantage over new firms. Chrysler is seeking a degree of freedom of action in dealing with its dealers that is denied to automobile manufacturers that having made their dealership contracts after the relocation amendment went into effect cannot seek relief under the contracts clause. We must not exaggerate the benefit to Chrysler, since eventually its

contracts will be renegotiated. But neither should we take completely seriously Chrysler's expression of fear that it will lose control over the location of Kolosso's dealership unless the relocation amendment is struck down. Chrysler can pay him to stay in his existing location, and it presumably will do so if the benefit to it exceeds the cost to him. Kolosso wants to move in order to reduce the cost of the repair and other services that he performs and so make more money on those services, even at the cost of fewer car sales because it is not as good a location for selling cars. Chrysler obviously cares more about the car sales. The parties thus have divergent interests, but they can be expected to negotiate to the solution that maximizes the net benefits of their relationship. See R.H. Coase, "The Problem of Social Cost," 3 *J. Law & Econ.* 1 (1960). And likewise in the *Marcus Brown* case, the landlord who had a better use for his property could always pay the existing tenants to leave.

But the fact that the parties to a contract can contract around a legal impediment does not dissolve the contracts clause issue. The state has changed the dealership contract to Chrysler's disadvantage. The result will be an added expense to Chrysler—either the loss of car sales by reason of the relocation or the expense of paying Kolosso not to move. But now that the literal interpretation of the contracts clause has been abandoned, the fact that a state makes a contract more costly to one of the parties does not establish a violation.

Of great, and we are inclined to say controlling, importance in the determination of whether a law violates the contracts clause is the foreseeability of the law when the original contract was made; for what was foreseeable then will have been taken into account in the negotiations over the terms of the contract. Assuming that Chrysler knew back in 1988 when it struck its deal with Kolosso that the location clause in the franchise contract would eventually be brought under regulation, it probably insisted on building the expected cost of that eventuality into the price or other terms of the

contract. If Chrysler thus was compensated in advance for bearing the burden of the regulation, invalidating the regulation would give Chrysler a windfall. Cf. *Eastern Enterprises v. Apfel*, --- U.S. ----, 118 S.Ct. 2131, 141 L.Ed.2d 451 (1998).

The centrality of foreseeability explains the courts' emphasis, in deciding whether the application of a new regulation violates the contracts clause, on the degree to which the activity to which the contract pertains was already heavily regulated when the contract was made. E.g., *Energy Reserves Group, Inc. v. Kansas Power & Light Co.*, 459 U.S. 400, 411, 103 S.Ct. 697, 74 L.Ed.2d 569 (1983); *Veix v. Sixth Ward Building & Loan Ass'n*, 310 U.S. 32, 38, 60 S.Ct. 792, 84 L.Ed. 1061 (1940); *Wisconsin Central Ltd. v. Public Service Comm'n*, 95 F.3d 1359, 1371 (7th Cir.1996); *Mercado-Boneta v. Administracion del Fondo de Compensacion al Paciente*, 125 F.3d 9, 13-14 (1st Cir.1997); *Holiday Inns Franchising, Inc. v. Branstad*, 29 F.3d 383 (8th Cir.1994). The automobile dealership relationship has been heavily regulated in Wisconsin as in other states for many years—in Wisconsin for more than sixty years. See Wis. Stat. § 218.01 (1937). But a history of regulation is never a sufficient condition for rejecting a challenge based on the contracts clause. Otherwise Wisconsin could decide to change the price in Chrysler's contracts—which Kolosso concedes the state could not do. *In re Workers' Compensation Refund*, 46 F.3d 813, 820 (8th Cir.1995); *Garris v. Hanover Ins. Co.*, 630 F.2d 1001, 1007 (4th Cir.1980). The fact that some incidents of a commercial activity are heavily regulated does not put the regulated firm on notice that an entirely different scheme of regulation will be imposed. The form and particularly the consequences of such a scheme would be so difficult to foresee that it would be unrealistic to think that the firm had been compensated for the risk of bearing those consequences when it negotiated the original contract. *Allied Structural Steel Co. v. Spannaus*, 438 U.S.

234, 250, 98 S.Ct. 2716, 57 L.Ed.2d 727 (1978). Let us not overlook the phrase that ends the well-known passage in *Veix*—"When he purchased into an enterprise already regulated in the particular to which he now objects, he purchased subject to further legislation *upon the same topic*." 310 U.S. at 38, 60 S.Ct. 792 (emphasis added; footnote omitted).

Terms like "foreseeability" and "same topic" and "entirely different" are not hard-edged; they call for judgments of degree; and our best judgment is that Chrysler has fallen short of showing a violation. The regulation of which it complains was in the direct path of the plausible (though of course not inevitable) evolution of Wisconsin's program for regulating automobile dealership contracts—for often a law is progressively tightened as experience under its original form discloses gaps—and constituted only a small and predictable step along that path. Long before Chrysler's contract with Kolosso, the auto dealership law had been used to void many standard terms in dealership contracts, notably provisions authorizing the manufacturer to terminate the dealership at will. The statutory language forbidding termination "unfairly, without due regard to the equities or without just provocation" was interpreted to forbid termination without good cause. Wis. Stat. § 218.01(3)(17); *Nagle Motors, Inc. v. Volkswagen North Central Distributor, Inc.*, 51 Wis.2d 413, 187 N.W.2d 374, 385 (1971); *Kuhl Motor Co. v. Ford Motor Co.*, 270 Wis. 488, 71 N.W.2d 420, 426 (1955) (dissent that became the majority opinion on rehearing, *id.* at 428). Although the law did not contain a specific provision dealing with relocation other than one allowing a dealer to complain if another dealer relocated into his area, the law's curtailment of the manufacturer's right of termination cast a cloud over *all* contractual clauses restricting a dealer's freedom of action, any one of which might be challenged in application as unfair, inequitable, unprovoked, or, in short, as not being based on good cause.

Suppose that before the 1993 amendment Kolosso had moved the dealership without getting Chrysler's permission and in response Chrysler had terminated the dealership. Kolosso could have brought suit under the auto dealership law claiming that the termination was without good cause because of exigent circumstances requiring the relocation. Rather than terminating Kolosso, Chrysler might have sought an injunction against the move or damages for the breach of the location clause. Kolosso would have defended against such a suit on the ground that Chrysler was acting in bad faith, an implied defense to all breach of contract suits in Wisconsin. *Bozzacchi v. O'Malley*, 211 Wis.2d 622, 566 N.W.2d 494, 495 (1997); *Foseid v. State Bank*, 197 Wis.2d 772, 541 N.W.2d 203, 212 (1995). The defense might have failed, because the contract provides that Michigan law, under which there is no implied duty of good faith "where parties have 'unmistakably expressed' their respective rights," *Hubbard Chevrolet Co. v. General Motors Corp.*, 873 F.2d 873, 877 (5th Cir.1989) (applying Michigan law), would govern any disputes arising from the contract—and this may be a principle of Wisconsin law as well. See *Wisconsin Natural Gas Co. v. Gabe's Construction Co.*, 220 Wis.2d 14, 582 N.W.2d 118, 120-22 *2 (1998). But the defense might well have succeeded. A Wisconsin court might refuse to enforce the Michigan doctrine as being contrary to a strong public policy of Wisconsin embodied in the *Motor Vehicle Dealers Law, Bush v. National School Studios, Inc.*, 139 Wis.2d 635, 407 N.W.2d 883, 886-87 (1987); *General Medical Corp. v. Kobs*, 179 Wis.2d 422, 507 N.W.2d 381, 384 (1993), and might hold that under Wisconsin law the override principle does not apply to a *statutory* duty of good faith. We need not decide. Chrysler's legal remedies, whatever precisely they are, could hardly be thought an adequate alternative to the termination that the auto dealership law might, even before the challenged amendment, have blocked. A lawsuit would poison the relationship. To say to Chrysler you may sue your dealer but not terminate him would be like saying to an employer that

if one of your employees breaks his contract you may sue him but not fire him. Cf. *McKnight v. General Motors Corp.*, 908 F.2d 104, 115 (7th Cir.1990).

The 1993 amendment in effect regularized a gray area in the dealership law by creating a specific procedure for resolving disputes over dealers' requests to relocate. Before then, as we have said, such disputes were likely to be resolved under a similarly vague substantive standard, only in the context of a termination. The change was thus largely procedural. It was still a real change, and we have no reason to doubt Chrysler's claim that the change hurt it. But it was not a major change—was rather the sort of fine tuning of the statute that Chrysler would have expected to take place from time to time because the statute regulates in such detail a complex commercial relationship. It is true that previous changes in the dealership law had been made prospective only, with the exception of one that Wisconsin's highest court struck down under the contracts clause. *Wipperfurth v. U-Haul Company of Western Wisconsin, Inc.*, 101 Wis.2d 586, 304 N.W.2d 767, 773 (1981). But the Wisconsin legislature had not committed itself to make all future changes prospective—and a rule which said that by making some changes in law prospective a legislature was disabling itself under the contracts clause from making future changes retrospective would encourage retroactive legislation, contrary to the original purpose of the contracts clause. See Douglas Kmiec & John O. McGinnis, "The Contract Clause: A Return to the Original Understanding," 14 *Hastings Const'l* L.Q. 525, 527-28 (1987).

Even big, totally unpredictable impairments of the obligation of contracts can survive challenge under the contracts clause if they are responsive to economic emergencies, *Energy Reserves Group, Inc. v. Kansas Power & Light Co., supra*, 459 U.S. at 411-13, 103 S.Ct. 697; *Home Building & Loan Ass'n v. Blaisdell, supra*, 290 U.S. at 425-28, 54 S.Ct. 231; *Marcus Brown Holding Co. v. Feldman,*

supra, 256 U.S. at 197-99, 41 S.Ct. 465, and even to considerably less exigent needs, *Chicago Board of Realtors, Inc. v. City of Chicago*, 819 F.2d 732, 743-44 (7th Cir.1987) (separate majority opinion)—so much less as to impel us in that opinion to describe the contracts clause as having been "defanged." *Id.* at 744. The little, predictable impairments—the ones that take only small steps along a path that was discernible when the original contract was signed—don't have to be justified at all, because the contract itself, as we have emphasized, is likely to contain terms that compensated contracting parties for the foreseeable risks of their relationship. That "impairments" of this character, not *really* being impairments, need not be justified is fortunate for the State of Wisconsin, because the justifications that its lawyers have offered for the 1993 amendment are hard to take seriously. Modern automobile dealers are substantial and sophisticated businesses. Kolosso owns two major dealerships. It sells hundreds of motor vehicles every year, not to mention repair and other services, and though its annual revenues are not in the record, they must exceed $10 million. Kolosso is not colossal; it is not on the scale of a Chrysler; but it is (and so far as we can determine was in 1988 as well) big enough to hire a lawyer capable of negotiating a contract that protected its legitimate interests. It gave up something when it agreed not to relocate without Chrysler's consent and no doubt it was compensated elsewhere in the contract for allowing its freedom of action to be restricted in this way. The essence of contract is limiting the freedom of the contracting parties.

But as we have tried to make clear, a contractual obligation is not impaired within the meaning that the modern cases impress upon the Constitution if at the time the contract was made the parties should have foreseen the new regulation challenged under the clause. Should have foreseen it not in detail of course, but sufficiently to have demanded and received compensation. Chrysler should have known in 1988

that it did not have a solid right to prevent a dealer from changing the location of the dealership, that it was operating in a grey area of the dealership law, that the law might some day be amended to regulate disputes over relocation specifically, and that if this happened it might not be able to get the amendment struck down under the contracts clause. And by virtue of these uncertainties, it would not have had to compensate Kolosso generously for the latter's surrendering his freedom to relocate, for the surrender would only have been partial.

And so there was no violation of the contracts clause—at least on the face of the 1993 amendment. The qualification may be significant. We do not know how the procedure set forth in the amendment will operate. The multiple criteria of "good cause," quoted at the outset of this opinion, make the term nondirective. Suppose it turns out that in practice "good cause" means "only if the dealer agrees to stay." Then in practice the restriction on Chrysler's freedom would be greater than we can know today or assume in this opinion, and the change in the regulatory scheme more abrupt and consequential. Maybe Chrysler could then invoke the contracts clause against the application of the amendment with greater success than in the present case. But we have no reason to believe that the Wisconsin courts will read the statute that way, and so the judgment of the district court must be AFFIRMED.

A true Copy:
Teste:

Clerk of the United States Court of
Appeals for the Seventh Circuit

APPENDIX B

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

CHRYSLER CORPORATION,

Plaintiff(s),

vs.

KOLOSSO AUTO SALES, INC.,

Defendant(s).

Case No. 95-C-1126

DECISION AND ORDER

This matter comes before the Court on objections to Magistrate Judge William E. Callahan's Recommendation that the action be dismissed on abstention grounds. For the following reasons, the objections to the Recommendation are sustained. The Court goes on to the merits of the action as briefed on summary judgment, and grants summary judgment in favor of the defendant.

I

The parties agree that the facts are as set forth in the Magistrate's Recommendation. The Court will not repeat those here. By way of summary, Chrysler Corporation ("Chrysler") objects to the retroactive application of Wis. Stat. § 218.01(3x), which establishes, *inter alia*, an administrative process for reviewing a manufacturer's rejection of a car dealer's relocation request. Chrysler had a dealership arrangement with Kolosso Auto Sales, Inc. ("Kolosso"), pursuant to which Kolosso has operated a Jeep-Eagle dealership at 2701 West College Avenue since 1988. Under the dealership contract, executed before § 218.01(3x) was enacted, Kolosso could not relocate its dealership without Chrysler's prior consent. In July, 1995, Kolosso formally

requested permission to move its dealership to another location approximately one mile away. Chrysler denied this request. In response to this denial, Kolosso filed a complaint with the Wisconsin Division of Hearings and Appeals ("the Division"), requesting a hearing under § 218.01(3x). Chrysler commenced this action in response to that proceeding, seeking a declaratory judgment stating that the retroactive application of § 218.01 (3x) unconstitutionally impairs its pre-existing contractual rights. The parties stipulated to a stay of the administrative proceedings pending a decision herein.

The parties cross-moved for summary judgment. One of Kolosso's arguments on summary judgment suggested that the Court abstain from hearing this matter in light of the pending state administrative proceedings. The Magistrate agreed, finding abstention warranted under both the *Pullman* and *Colorado River* doctrines.

II

Under *Railroad Commission of Texas v. Pullman,* 312 U.S. 496 (1941), abstention is warranted when there is an unsettled question of state law and determination of that question might moot the federal constitutional question or otherwise render a decision thereon unnecessary. (Rec'n at 16.) The Magistrate found *Pullman* abstention warranted on two grounds. First, the Magistrate concluded that there was an unsettled issue of state law. That is, Chrysler had challenged the Division's jurisdiction to hear Kolosso's administrative complaint. It seems that the original version of § 218.01(3x) authorized the Commissioner of Transportation to hear such complaints, but the Office of the Commissioner of Transportation was abolished shortly thereafter. Thus, at the time Kolosso filed its complaint with the Division, there was no official entity formally authorized to hear the complaint. Second, the Magistrate concluded that, even assuming the Division had jurisdiction to hear Kolosso's complaint, a determination on the merits of Kolosso's

complaint by the Division would moot the constitutional question if the Division decided in Chrysler's favor. For these reasons, the Magistrate concluded that *Pullman* abstention was warranted.

The Court respectfully disagrees. First, the Wisconsin Legislature has since amended § 218.01(3x) to authorize the Division to hear complaints like Kolosso's. Wis. Stat. § 218.01(3x)(b)(3) (Supp. 1997). As a consequence, Chrysler has formally withdrawn its objection to the Division's jurisdiction, and that issue no longer remains unsettled. The only remaining "unsettled issue of state law" is the question of "good cause". As Chrysler points out, the question of whether there was "good cause" to reject Kolosso's request is not the type of "unsettled issue of state law" contemplated under the *Pullman* doctrine. Determinations of good cause turn on the particular facts of an individual case; they do not resolve purely legal issues of general applicability to all cases. Thus, the unsettled issue involved here is more one of fact unique to a particular case, not one of law that renders it unnecessary to consider the constitutional question in this or any other case down the road. More importantly, the state law proceedings themselves constitute part of the alleged constitutional harm. That is, the gravamen of Chrysler's constitutional claim is that forcing it to litigate its decision before the Division violates and impairs its pre-existing contractual right to grant or deny Kolosso's requests without administrative oversight. Thus, a decision by the Division in Chrysler's favor does not moot the constitutional issue. It simply inflicts or allows part of the harm Chrysler is trying to prevent by raising the constitutional issue. For these reasons, the Court does not find abstention warranted under the *Pullman* doctrine.

Under *Colorado River Water Conservation District v. United States*, 424 U.S. 800, 821 (1976), a federal court may abstain from exercising jurisdiction and defer to a concurrent state proceeding when doing so would avoid duplicative

litigation. The question of abstention under *Colorado River* is a two-step inquiry. First, the Court determines whether the state and federal proceedings are "parallel", and if so, the Court then weighs various factors to determine whether "exceptional circumstances" warrant abstention. (Rec'n at 20-21.) Two proceedings are "parallel" when "substantially the same parties are contemporaneously litigating substantially the same issues" in two different forums. (id.) Here, the Magistrate is obviously correct in stating that the same parties are involved in both the state and federal proceedings. But the Court sees little basis for the Magistrate's conclusion that "the issues at stake in both proceedings are identical." (id.) The issue before the Division is whether Chrysler had good cause to deny Kolosso's relocation request. The issue before this Court is whether retroactive application of § 218.01 (3x) is unconstitutional. Not only is the latter issue not before the Division, the Court seriously doubts whether the Division could entertain a constitutional issue. And the question of "good cause", which is the gravamen of the complaint before the Division, will never be an issue in this case. In short, while the parties are the same, the issues in the two proceedings are very different. Indeed, one could say the two proceedings, rather than being "parallel", are actually at cross-purposes, insofar as the federal action seeks to have the state proceedings halted and declared unconstitutional. Thus, the Court concludes that abstention is not warranted under *the Colorado River* doctrine.

Accordingly, for the foregoing reasons, the objections to the Magistrate's Recommendation are sustained and the request to abstain denied.

III

Rather than refer this matter back to the Magistrate for another Recommendation on the constitutional issue, the Court addresses the matter directly. Chrysler seeks a declaratory judgment stating that retroactive application of

§ 218.01(3x) impairs its pre-existing contractual rights in violation of the Contract Clause, which is set forth in Article 1, Section 10 of the United States Constitution and states that "[n]o State shall ... pass any ... Law impairing the Obligation of Contracts." To determine whether a state law violates this constitutional provision, "[t]he threshold inquiry is 'whether the state law has, in fact, operated as a substantial impairment of a contractual relationship.'" *Energy Reserves Group, Inc. v. Kansas Power & Light Co.*, 459 U.S. 400, 411 (1983), quoting *Allied-Structural Steel Co. v. Spannaus*, 438 U.S. 234, 244 (1978). If it has, then the State must demonstrate a "significant and legitimate public purpose behind the regulation, ... such as the remedying of a broad and general social or economic problem." Id. at 411-12. "Once a legitimate public purpose has been identified, the next inquiry is whether the adjustment of 'the rights and responsibilities of contracting parties [is based] upon reasonable conditions and [is] of a character appropriate to the public purpose justifying [the legislation's] adoption.'" *Id.* at 412, quoting *United States Trust Co. v. New Jersey*, 431 U.S. 1, 22 (1977).

Addressing the first element of the analysis, "[a] determination of whether a substantial impairment exists involves a three-part inquiry: whether a contractual relationship exists; whether a change in law impairs that contractual relationship; and whether the impairment is substantial." *In re Workers' Compensation Refund Western Nat'l Mutual Ins. Co. v. Lennes*, 46 F.3d 813, 817-18 (8th Cir. 1995). Here, there clearly was a contract. Moreover, the statute clearly impairs Chrysler's rights under that contract, insofar as Chrysler no longer enjoys the right to reject or deny a relocation request at its own discretion and without administrative oversight. Thus, the question is whether the impairment is substantial. As the Supreme Court has stated, "[m]inimal alteration of contractual obligations may end the inquiry at its first stage." *Allied*, 438 U. S. at 245. One of the critical questions in this regard is the extent to which the industry has been regulated

by the State in the past. "A company in a heavily regulated industry is on notice that future legislation may adjust its position." *Nationwide Mutual Ins. Co. v. Comm'r of Insurance,* 397 Mass. 416, 424 (Mass. 1986); see also, *Energy Reserves*, 459 U.S. at 413 ("Significant here is the fact that the parties are operating in a heavily regulated industry."); *In re Workers,* 46 F.3d at 820 ("Heavy regulation of an industry may reduce reasonable expectations."); *Ross v. City of Berkeley,* 655 F. Supp. 820, 828 (N.D.Cal. 1987) ("Also significant is the extent to which the industry entered into by the contracting parties was supervised by the state at the time of the agreement.").

Wisconsin has regulated the motor vehicle dealership industry for decades. Section 218.01 is part of the Wisconsin Auto Dealership Law, which was enacted in 1935. *Forest Home Dodge, Inc. v. Karns,* 29 Wis.2d 78, 85 (Wis. 1965). The statute "was enacted in recognition of the long history of the abuse of dealers by manufacturers." *Id.* "These laws deal with the relationship between auto manufacturers and auto dealers. The purpose of the law is to furnish the dealer with some protection against unfair treatment by the manufacturer." *Id.* Similar to § 218.01(3x), "[e]arlier enactments had guarded against specific evils occasioned by what the legislature considered the unfair or overreaching tactics of manufacturers, *e.g.,* forced acceptance of unordered autos or parts (218.01(3)(a)(15)); coercion or unfair treatment through threat of cancellation (218.01(3)(a)(16)); unfair cancellation or refusal to renew franchises, or without due regard to the equities of the dealer (218.01(3)(a)(17))." *Id.* More to the point, Wisconsin's motor vehicle dealership laws have previously established appeal mechanisms for dealers whose business or dealership is at risk of being altered or jeopardized by some specific action of the manufacturer. For example, if a manufacturer wishes to discontinue or cancel a dealership, it must first provide written notice of the same to the Department of Transportation and the dealer at issue, and

the law establishes an administrative review process for the dealer to challenge that decision, a process very similar to the one established by § 218.01(3x). Wis. Stat. § 218.01(bd). Likewise, if a manufacturer wishes to establish or relocate another dealership within the relevant market area of an existing dealership, the manufacturer must serve notice upon the existing dealer, who may then file an administrative complaint seeking to block that decision. Wis. Stat. § 218.01(3)(f). If a manufacturer wishes to modify an agreement with one of its dealers, it must again serve notice, and the dealer may file an administrative complaint challenging the proposed modification. Wis. Stat. § 218.01(3)(frn). If a family member requests permission to succeed a deceased or incapacitated dealer under an existing franchise agreement, and the manufacturer rejects that request, the family member may challenge that decision through an administrative complaint and hearing. Wis. Stat. § 218.01(3c).

In short, not only has the industry at issue been heavily regulated for decades, but many of the regulations have required the manufacturer to show some form of "good cause" in an administrative proceeding before advancing certain courses of action or rejecting others. Indeed, "[t]he whole framework of the law shows that the manufacturer, with his superior bargaining power, is not to be unsupervised in his dealings with the small independent dealer; and that the state, acting through the motor vehicle department, must see to it that the elements of fairness and freedom in bargaining between the parties continues to exist." *Forest Home,* 29 Wis. 2d at 86. Given this regulatory history, Chrysler is hard-pressed to argue that it could not reasonably anticipate the establishment of a similar review process for a dealer's relocation request. It was clearly on notice that its decisions vis-a-vis a particular dealer could be made subject to administrative review by the State, and thus the fact that § 218.01(3x) added yet another area of review did not constitute a substantial impairment of Chrysler's contractual

rights. Having found no substantial impairment, the Court need not consider the remaining elements of Chrysler's claim under the Contract Clause.[1]

NOW, THEREFORE, BASED ON THE FOREGOING, IT IS HEREBY ORDERED THAT:

1. The objections to the Magistrate's Recommendation are sustained;

2. Chrysler's motion for summary judgment is denied, Kolosso's motion for summary judgment is granted, and a declaratory judgment shall be entered in Kolosso's favor stating that the retroactive application of § 218.01(3x) to this relocation dispute is not unconstitutional.

Dated at Milwaukee, Wisconsin, this 14th day of October, 1997.

SO ORDERED,

/s/ Rudolph T. Randa
HON. RUDOLPH T. RANDA
U.S. District Judge

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[1] Chrysler argues that, although Wisconsin has regulated the motor vehicle dealership industry for decades, it has never regulated an existing dealer's ability to change locations. This is true, but it has regulated the manufacturer's ability to relocate dealerships, which is closely related. Wis. Stat. § 218.01(3)(f). Moreover, "the appropriate inquiry is whether the parties are operating in a heavily regulated industry, and not whether the specific contract right impaired had been subject to prior regulation." *Nationwide Mutual*, 397 Mass. at 424, fn. 8, citing *Energy Reserves*, 459 U.S. at 413-414 (although at the time of contract State did not regulate natural gas prices specifically, its supervision of the industry was extensive and intrusive).

APPENDIX C

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

CHRYSLER CORPORATION,

Plaintiff,

v.

KOLOSSO AUTO SALES, INC.,

Defendant

Case No. 95-C-1126

Magistrate Judge's Recommendation Regarding
Cross Motions for Summary Judgment

On November 2, 1995, plaintiff Chrysler Corporation ("Chrysler"), commenced this action against defendant Kolosso Auto Sales, Inc., ("Kolosso"), seeking to enjoin Kolosso from attempting to relocate this Jeep-Eagle dealership under the provisions of Wis. Stats. § 218.01(3x). Chrysler also seeks a declaratory judgment that recently enacted Wis. Stats. § 218.01(3x) unconstitutionally impairs Chrysler's pre-existing contractual rights as guaranteed by the Contract Clause which is set forth in Article I, § 10 of the United States Constitution, ("No State shall . . . pass any . . . Law impairing the Obligation of Contracts.").[1]

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[1] The constitution of the State of Wisconsin contains language which essentially mirrors that of the federal constitution. See Article I, § 12 ("No . . . law impairing the obligation of contracts . . . shall ever be peased.").

This court has federal question jurisdiction pursuant to 28 U.S.C. § 1331.[2] Venue is proper in the Eastern District of Wisconsin. Since not all the parties have consented in writing to magistrate judge jurisdiction, the court has limited jurisdiction pursuant to 28 U.S.C. § 636(b). Currently pending before the court are the parties' cross motions for summary judgment. In addition, the Attorney General of the State of Wisconsin has filed an *amicus curiae* brief which opposes Chrysler's motion for summary judgment. The facts are largely undisputed, and are as follows.

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[2] It should be noted that Kolosso asserts that the Anti-Injunction Act, 28 U.S.C. § 2283, deprives this court of subject matter jurisdiction. The Act provides:

> A court of the United States may not grant an injunction to stay proceedings in a State court except as expressly authorized by Act of Congress, or where necessary in aid of its jurisdiction, or to protect or effectuate its judgments.

On January 11, 1998, Chrysler filed a Motion for Preliminary Injunction seeking an order preventing Kolosso from proceeding on its statutory claims before the State of Wisconsin, Division of Hearings and Appeals, ("the Division"). In response, Kolosso agreed to "hold the proceedings on its complaint . . . in abeyance until [the] court disposes of this action, either on the grounds of abstention or failure to join an indispensable party or on its merits." (Kolosso's Brief in Opposition to Motion for Preliminary Injunction, p. 3). On January 30, 1998, the court entertained oral argument regarding Chrysler's motion. At that time, the parties indicated that the Division has ordered that the proceedings be suspended until such time as the parties were to request that the Division schedule further proceedings regarding Kolosso's complaint. Because the parties recognized that the Motion for Preliminary Injunction had been rendered moot by the Division's order, they agreed on the record that there would be no need for an order entering a preliminary injunction.

Because Chrysler no longer seeks injunctive relief from this court, and because Kolosso stipulated to the stay of proceedings before the Division, the Anti-Injunction Act, 28 U.S.C. § 2283, in no way affects this court's subject matter jurisdiction.

Background

Chrysler is a Delaware corporation which is licensed as a motor vehicle manufacturer and distributor by the State of Wisconsin under the provisions of the Motor Vehicle Dealership Law, codified in Chapter 218 of the Wisconsin Statutes. Kolosso is a Wisconsin corporation which is licensed as a motor vehicle dealer by the State of Wisconsin also under the provisions of Wis. Stats. § 218.01. Kolosso owns and operates two motor vehicle dealerships in Appleton, Wisconsin. The dealership at issue in this dispute is Kolosso's Jeep-Eagle Dealership which is located at 2701 West College Avenue. Kolosso also owns and operates a Toyota dealership which is located at 3000 W. Wisconsin Avenue.

Jeep-Eagle motor vehicles are manufactured and distributed by Chrysler. On March 17, 1988, Chrysler and Kolosso entered into a Jeep and Eagle Sales and Service Agreement, ("SSA"), whereby Kolosso was authorized to operate an exclusive, stand alone Jeep-Eagle dealership at 2701 West College Avenue. Since August 6, 1993, the date upon which § 218.01(3x) became effective, there has not been an amendment, renewal or modification of the SSA. In March 1988, Kolosso also executed a Dealership Facilities and Location Addendum which provides that Kolosso will conduct operations only at the 2701 West College Avenue location. The addendum, as agreed to by Chrysler and Kolosso, provides that the 2701 West College Avenue location will not be used for any non-Chrysler sales and services activities.

The SSA also expressly provides:

> [Kolosso] shall conduct its Dealership Operations only from the dealership location and dealership facilities . . . [Kolosso] shall not, except as provided for in subparagraph 11(d)(ii) hereunder, either directly or indirectly, establish any place or places for the conduct of its Dealership Operations other than at the Dealership Facilities and Dealership

> Operations location as set forth in the Dealership Facilities and Location Addendum. (SSA, § 11(d)(1)).

The SSA further provides:

> [Kolosso] shall not make any change in the location of Dealership Operations or make any change in the area and use of the Dealership Facilities without the prior written approval of [Chrysler].
>
> (SSA, § 11(d)).

In addition, the Dealership Facilities and Location Addendum states:

> All changes in the dealership facilities and dealership location that may be agreed upon by [Kolosso] and [Chrysler] . . . shall be reflected in [a] new Dealership Facilities and Location Addendum (Addenda) executed by [Kolosso] and [Chrysler]. (See Memorandum in Support of Chrysler Corporation's Motion for Summary Judgment, Exhibit D)

Kolosso has operated its Jeep-Eagle dealership at 2701 West College Avenue since 1988, and has not made any change in the location, use or area of the dealership facilities without Chrysler's approval.

In 1937, the Wisconsin legislature enacted the Motor Vehicle Dealership Law, ("MVDL"), which is codified in Chapter 218 of the Wisconsin Statutes. The MVDL is a regulatory scheme which was created in an attempt to balance the long-recognized disparity in bargaining power between motor vehicle dealers and economically-superior motor vehicle manufacturers. See *Forest Home Dodge, Inc. v. Karns*, 29 Wis.2d 78, 85 (1965); *Kuhl Motor Co. v. Ford Motor Co.*, 270 Wis. 488 (1955).

In 1993, the Wisconsin legislature amended Chapter 218 to include Wis. Stats. § 218.01(3x), which became effective

on August 6, 1993. The Wisconsin legislature expressly provided for the retroactive application of § 218.01(3x) to automobile franchise agreements that were in effect prior to its enactment. 1993 Wis. Act 13, § 48.

Section 218.01(3x), provides, in relevant part:

DEALERSHIP CHANGES . . .

(b) 1. If a motor vehicle dealer's agreement with [a manufacturer] requires the [manufacturer's] prior approval of an action proposed to be undertaken by the dealer under this subsection, a dealer may not voluntarily . . . relocate a franchise without giving prior written notice of the proposed action . . .

2. [A manufacturer] who does not approve of the proposed action shall . . . file with the department and serve upon the dealer a written statement of the reasons for its disapproval. The reasons given for the disapproval or any explanation of those reasons by the manufacturer . . . shall not subject the manufacturer . . . to any civil liability unless the reasons given or explanations made are malicious and published with the sole intent to cause harm to the dealer . . . Failure to file and serve a statement within the applicable period shall, notwithstanding the terms of any agreement, constitute approval of the proposed action by the [manufacturer]. If [a manufacturer] files a written statement within the applicable period, the dealer may not voluntarily undertake the proposed action unless it receives an order permitting it to do so from the office of the commissioner of transportation under par. (c)2.

3. A dealer who is served with a written statement by [a manufacturer] under subd. 2 may file with the department and the officer of the commissioner of transportation and serve upon the [manufacturer] a complaint for the determination of whether there is good

cause for permitting the proposed action to be undertaken. The office of the commissioner of transportation shall promptly schedule a hearing and decide the matter. The proposed action may not be undertaken pending the determination of the matter.

(c) 1. In determining if there is good cause for permitting a proposed action to be undertaken, the office of the commissioner of transportation may consider any relevant factor including:

a. The reasons for the proposed action.
b. The [manufacturer's] reasons for not approving the proposed action.
c. The degree to which the inability to undertake the proposed action will have a substantial and adverse effect upon the motor vehicle dealer's investment or return on investment.
d. Whether the proposed action is in the public interest.
e. The degree to which the proposed action will interfere with the orderly and profitable distribution of products by the [manufacturer].
f. The impact of the proposed action on other motor vehicle dealers.

2. The decision of the office of the commissioner of transportation shall be in writing and shall contain findings of fact and a determination of whether there is good cause for permitting the proposed action to be undertaken. The decision shall include an order that the dealer be allowed or is not allowed to undertake the proposed action, as the case may be. The order may require fulfillment of appropriate conditions

before and after the proposed action is undertaken.

Section 218.01(3x) has yet to be applied or interpreted by the Division. Likewise, it has yet to be interpreted by any Wisconsin court.

By letter dated July 28, 1995, Kolosso formally requested Chrysler's permission to move its Jeep-Eagle dealership to a different location approximately one mile away. Under the proposal, Jeep-Eagle sales operations would be conducted at an as-yet unconverted warehouse at 3030 West Wisconsin Avenue in Appleton, and Jeep-Eagle service and parts operations would be conducted at an existing facility housing Toyota sales, service and parts operations at 3000 West Wisconsin Avenue. In a letter incorporating its request, Kolosso stated:

> This proposal will allow us to be more productive and reduce greatly our costs per unit sold and serviced. It will make us more competitive with the much larger volume dealers in our market. It will obviously benefit us, Chrysler and our customers. Your office has expressed some concern with the traffic at [the proposed] location compared to our existing . . . location on College Avenue. However, a recent study we conducted showed that the daily traffic count in front of the proposed location was 11,190, which was greater than the daily traffic count in front of the College Avenue location of 10,780. Also, the reduction in other overhead will enable us to increase our advertising to attract even more traffic to this location.
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> We have a pending agreement with Russ Darrow to lease the College Avenue location to him, which he needs for his Chrysler-Plymouth operations. This is another reason why the proposal will benefit Chrysler. (See Memorandum in Support of Chrysler Corporation's Motion for Summary Judgment, Exhibit G).

On August 9, 1995, Chrysler denied the request, stating that it preferred the present arrangement with Kolosso. Among the reasons cited for denying Kolosso's request were the following:

> Your proposal requests a relocation from College Avenue to Wisconsin Avenue. As your present location is centered in the heart of the Appleton auto row, with competitive representation surrounding you, a relocation to Wisconsin Avenue will move you away from the primary sport utility competition for Jeep Eagle, (Ford and Chevrolet).
>
> Your proposal calls for a separate Jeep Eagle showroom and dualled service with Kolosso Toyota. As we have previously discussed, CC's annual planning potential for Jeep Eagle in Appleton is 343. With the potential for annual new vehicles sales volumes of this level or even higher, Jeep Eagle is more than capable of standing on its own in Appleton. Your current record sales and profit figures support this position.
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> The potential of leasing your existing College Avenue facility to Russ Darrow CP has mark for Darrow only, and would allow him an exceptional location for the expansion of used vehicles sales and body shop operations. The opportunities for Darrow at this location are the same for Kolosso. Why move away from a proven high traffic auto row location? Your relocation to a new location will simply allow Darrow to more effectively merchandise late model Jeep Eagle vehicles into the Appleton market. (See Memorandum in Support of Chrysler Corporation's Motion for Summary Judgment, Exhibit H).

On or about September 18, 1996, in response to Chrysler's denial of the request to relocate, Kolosso filed a complaint with the Division. The complaint requested that the Division conduct a hearing and issue an order pursuant to

§ 218.01(3x) that would allow Kolosso to relocate the Jeep-Eagle dealership facility. The Division stayed the proceedings regarding Kolosso's complaint on September 20, 1995, pending mediation pursuant to § 218.01(7m). Mediation was thereafter conducted, but without success.

On November 2, 1995, Chrysler commenced this action for declaratory relief challenging the retroactive application of § 218.01(3x) to its pre-existing contractual relationship with Kolosso. After receiving the assent of the parties, and in view of the commencement of this action, the Division stayed all administrative proceedings on November 27, 1995.

As mentioned in footnote 1 above, Chrysler filed a Motion for Preliminary Injunction on January 11, 1996. However, because the parties recognized that the Motion for Preliminary Injunction had been rendered moot by the Division's entry of a stay, they agreed that there would be no need for court action on the motion for a preliminary injunction. Both Chrysler and Kolosso subsequently filed motions for summary judgment.

On March 1, 1996, the State of Wisconsin requested leave to appear as *amicus curiae* and to file a brief in this matter. The parties did not oppose the State's motion, and it was granted on March 3, 1996.

Analysis

Under the provisions of Rule 66(c), Fed. R. Civ. P., a motion for summary judgment will be granted where there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. The burden rests squarely with the party moving for summary judgment to demonstrate that no genuine issue of material fact exists. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). If there is any doubt as to the existence of a material fact, then those doubts should be resolved in favor of the non-moving party

and summary judgment should be denied. *Wolf v. Fitchburg*, 870 F.2d 1327, 1330 (7th Cir. 1989).

As the parties have pointed out, there are no disputed material facts in the present case. Rather, the primary issue presented by both parties' motions for summary judgment is a question of law — whether retroactive application of § 218.01(3x) unconstitutionally impairs Chrysler's pre-existing contractual right to refuse Kolosso's relocation request. Thus, both parties are seeking a declaratory judgment as to the constitutionality (or unconstitutionality) of the Wisconsin statute. The Declaratory Judgment Act gives federal courts discretionary power to issue declarations regarding "the rights and other legal relations of any interested party seeking such declaration." 28 U.S.C. § 2201.

The primary basis for Chrysler's challenge to § 218.01(3x) is the Contract Clause which provides: "No State shall . . . pass any . . . Law impairing the Obligation of Contracts." U.S. CONST. art. 1, § 10, cl. 1. "The Contract Clause was originally written to prevent the states from enacting debtor relief laws, and the Supreme Court has relied upon the Contract Clause mainly to limit the ability of states to modify public charters and contracts to which a state is a party." *Wisconsin Central Limited v. Public Service Commission*, 95 F.3d 1359, 1370 (7th Cir. 1996) (*citations omitted*). Throughout the 20th century, the Supreme Court has seldom favored the Contract as a mechanism for invalidating state legislation which imposed on private economic relationships. *Id.* Nevertheless, two Supreme Court decisions suggest the re-emergence of the Contract Clause: *Allied Structural Steel Co. v. Spannaus*, 438 U.S. 234 (1978); and *Energy Reserves Group, Inc. v. Kansas Power and Light Co.*, 459 U.S. 400 (1983).

In *Spannaus*, the Supreme Court wrote:

> Contracts enable individuals to order their personal and business affairs according to their particular needs and

> interests. Once arranged, those rights and obligations are binding under the law, and the parties are entitled to rely on them.

Allied Structural Steel, 438 U.S. at 245.

In both cases, the Supreme Court articulated a three-step analytical approach for determining whether a challenged state law violates the Contract Clause. The first inquiry is whether the state law has operated as a substantial impairment of a contractual relationship. *Energy Reserves Group*, 459 U.S. at 411. In making such a determination, a reviewing court should consider whether the industry the complaining party has entered has been regulated in the past, and if so, to what extent. *Id.* If there is a significant impairment, a reviewing court must next determine if the impairment is justified by a legitimate public purpose. *Id.* If such a purpose exists, then the court must determine whether the adjustments of the rights and/or responsibilities of the contracting parties are appropriate to the public purpose and are based upon reasonable conditions. *Id.*

In its motion for summary judgment, Chrysler asserts that the retroactive application of § 218.01(3x) impairs its pre-existing contractual right to deny Kolosso's relocation request. Chrysler asserts that, even assuming its relationship with Kolosso is subject to regulation by the State of Wisconsin, such regulation is not so extensive so as to undermine Chrysler's contractual expectations. Chrysler argues that the impairment of its pre-existing contractual right is substantial because § 218.01(3x) gives Kolosso the opportunity to circumvent Chrysler's refusal to consent to a relocation by filing a complaint with the Division. In short, Chrysler argues that the creation of § 218.01(3x) affords Kolosso statutory recourse that it did not have at the time the SSA was executed. And, Chrysler asserts that § 218.01(3x) does not promote a strong public purpose or policy because it was not enacted to protect the general public. Rather, Chrysler

asserts, Chapter 218, as a whole, was enacted to protect automobile dealers, a special interest group, from unfair treatment by automobile manufacturers.

Chrysler also challenges the authority of the Division to hear Kolosso's complaint. It does so on the grounds that the statute vests the Office of the Commissioner of Transportation with the sole authority to conduct hearings pursuant to § 218.01(3x). But, on January 1, 1994, the Office of the Commissioner of Transportation was abolished. See, 1993 Wis. Act. 18. And, at the time Kolosso had filed its complaint with the Division, there had been no subsequent legislation authorizing any Wisconsin agency to adjudicate disputes arising under § 218.01(3x). Thus, Chrysler contends, the Division is without jurisdiction to hear the dispute.

Kolosso on the other hand argues that, because Wisconsin has continuously and extensively regulated the automobile manufacturer-dealer relationship since 1937, Chrysler's contract expectations are not impaired by the retroactive application of § 218.01(3x). Second, Kolosso argues that, even if Chrysler's contractual expectations are impaired, the impairment is not substantial. This is so, Kolosso asserts, because the statute provides that, in reviewing Kolosso's complaint, the Division must consider: (1) Chrysler's reasons for not approving the relocation request, (See § 218.01(3x)(b)3(c)1b); and (2) the degree to which the proposed relocation will interfere with the orderly and profitable distribution of products by Chrysler. (See § 218.01(3x)(b)3(c)1e). Third, Kolosso asserts that § 218.01(3x) serves a significant and legitimate public interest because it promotes fair dealing. And, Kolosso asserts that relocation of its automotive dealership will result in increased economic efficiency as well as a reduction in overhead costs. Kolosso contends that these benefits will ultimately pass onto

the general public.[3] Finally, Kolosso asserts that this court should abstain from entertaining Chrysler's declaratory judgment suit in light of the pending proceeding before the Division.

In its *amicus curiae* brief, the State of Wisconsin joins Kolosso in asserting that: (1) retroactive application of § 218.01(3x) does not impair Chrysler's contractual rights; and, (2) even if this court finds impairment, it is justified by the state's legitimate exercise of its police powers. Second, the State of Wisconsin asserts that Chrysler's federal challenge to the authority of the Division under Wisconsin law violates the concept of federalism. Third, the State of Wisconsin argues that Chrysler's constitutional challenge to § 218.01(3x) is not ripe because the Division has yet to act on Kolosso's complaint. The State of Wisconsin asserts that it remains a matter of speculation as to whether the Division would sustain or reject Kolosso's complaint, and on what grounds. Moreover, it points out that the Division could very well decide in favor of Chrysler. Finally, the State of Wisconsin argues that this court should abstain from entering a declaratory judgment pursuant to *Railroad Commission of Texas v. Pullman Co.*, 312 U.S. 496 (1941), because this case presents potentially dispositive state law issues which may obviate the need to decide Chrysler's federal claims.

Abstention

Before I consider reaching the merits of the parties' respective motions for summary judgment, the potentially dispositive matter of abstention must be addressed.

It is well-settled that federal courts have a strict duty to exercise the jurisdiction that has been conferred upon them by

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[3] Kolosso also argues that, pursuant to 28 U.S.C. § 2283, the Anti-Injunction Act, this court lacks subject matter jurisdiction to enjoin ongoing state proceedings. This argument was previously addressed in footnote 2.

Congress. *Colorado River Water Conservation Dist. v. United States*, 424 U.S. 800, 821 (1976). However, the Supreme Court recently emphasized that the duty to exercise federal jurisdiction is not absolute. *Quackenbush v. Allstate Insurance Co.*, --- U.S. ---, ---, 116 S.Ct. 1712, 1720 (1996). Indeed, the court noted that "federal courts may decline to exercise their jurisdiction, in otherwise 'exceptional circumstances,' where denying a federal forum would clearly serve an important countervailing interest." *Id.* (*citing Colorado River*, 424 U.S. at 813). In that connection, the Supreme Court has recognized several abstention doctrines under which federal courts may properly refrain from exercising their jurisdiction.

These doctrines include: (1) Pullman-type abstention, to avoid needless determination of a federal constitutional question until the state court has had an opportunity to resolve state law questions (See *Railroad Commission of Texas, v. Pullman Co.*, 312 U.S. 496 (1941); (2) Burford-type abstention, to avoid needless conflict with the state's administration of its own affairs; (*See Burford v. Sun Oil Co.*, 319 U.S. 315 (1943)); (3) *Younger*-type abstention, to avoid interference with pending state criminal proceeding, (*See Younger v. Harris*, 401 U.S. 37, (1971)), or with certain types of state civil proceedings. (See *Huffman v. Pursue, Ltd.*, 420 U.S. 592 (1975)); and, (4) *Colorado-River*-type abstention, to avoid duplicative litigation (*See Colorado River*, 424 U.S. 800).

The question of whether the doctrine of abstention should be invoked is a matter of discretion, *Harman v. Foresenius*, 380 U.S. 528 (1965), which must be determined on a case-by-case basis. *Baggett v. Bullitt*, 377 U.S. 360 (1964).

1. *Pullman* Abstention

In *Railroad Commission of Texas v. Pullman*, 312 U.S. 496, the defendant challenged the constitutionality of an order issued by the Texas Railroad Commission relating to the employment of conductors on trains which contained sleeping cars. The defendant also challenged the Commission's authority to issue such an order. The Supreme Court held that the lower court should have stayed the federal proceeding until the issue of whether the Commission had jurisdiction to issue the order could be decided in an underlying state proceeding. *Pullman*, 312 U.S. at 501. The court explained the principles underlying its decision:

> Few public interests have a higher claim that the avoidance of needless friction with state policies, whether the policy relates to the enforcement of the criminal law, or the administration of a specialized scheme for liquidating embarrassed business enterprises, or the final authority of a state court to interpret doubtful regulatory laws of the state. These cases reflect a doctrine of abstention appropriate to our federal system, whereby the federal courts, 'exercising a wise discretion,' restrain their authority because of 'scrupulous regard for the rightful independence of the state governments' and for the smooth working of the federal judiciary.

Id., at 500-501 (*citations omitted*).

Pullman abstention is appropriate when there is an unsettled question of state law, *Hawaii Housing Authority v. Midkiff*, 467 U.S. 229, 237 (1984), and determination of relevant state law might moot or change the posture of the federal constitutional question. *Colorado River*, 424 U.S. at 814.

Both the State of Wisconsin and Kolosso argue that *Pullman* abstention is appropriate in this case because there is an unsettled question of state law. Specifically, they point

out that, in addition to challenging the constitutionality of the retroactive application of § 218.01(3x), Chrysler has challenged the Division's jurisdiction to hear Kolosso's relocation complaint. Whether a state agency has jurisdiction to act under a particular state statute, they argue, is a matter that is peculiarly within the province of the law of the State of Wisconsin. The State of Wisconsin and Kolosso also argue that *Pullman* abstention is appropriate in this case because a determination of relevant state law could moot or change the posture of the federal constitutional question. Both point out that since its enactment, § 218.01(3x) has yet to be applied or interpreted by the Division, or by any Wisconsin court. Moreover, they contend that allowing Kolosso's complaint to proceed before the Division might obviate the need to address Chrysler's constitutional claims precisely because the Division could sustain Chrysler's denial of Kolosso's relocation request.

The State of Wisconsin and Kolosso maintain that the Division should first be given the opportunity to decide the question of its jurisdiction, as well as the merits of Kolosso's complaint. Both argue that Chrysler's constitutional challenges can and should be raised in the same forum in which the other issues will be decided, *i.e.*, before the Division. Kolosso points out that, under Wisconsin law, the Division's decision is then subject to two levels of mandatory appellate review. See Wis. Stats., § § 227.46(2m) and 227.52. Chrysler can seek review of its constitutional challenges by way of the Wisconsin appellate system, and potentially by the United States Supreme Court.

Chrysler has failed to offer a meaningful response to the argument that its challenge to the Division's jurisdiction presents an unsettled question of state law. Ironically, while advancing its challenge to the Division's jurisdiction, Chrysler asserts that this issue must be decided under the state law which was in effect at the time Kolosso filed its complaint. (See Chrysler Corporation's Reply Memorandum In Support

of its Motion for Summary Judgment, p. 8). By doing so, Chrysler all but concedes that Wisconsin law is determinative on the issue of whether the Division has jurisdiction to hear Kolosso's complaint.

Thus, Chrysler's complaint presents a question of state law. And, because neither the Division, nor any Wisconsin court has yet to address any aspect of § 218.01(3x), the issue of the Division's jurisdiction to hear Kolosso's complaint is most definitely unsettled.

Chrysler disputes the assertion that a determination of Kolosso's complaint by the Division could moot or change the posture of its federal constitutional claim. In support of its position, Chrysler points out that on August 6, 1993, the Wisconsin legislature made § 218.01(3x) applicable to all pre-existing contracts, including the SSA at issue in this case. Thus, Chrysler argues that, regardless of the Division's ultimate decision, "the damage has been done." In addition, Chrysler asserts that, in reviewing Kolosso's relocation request, the Division cannot consider Chrysler's constitutional challenges to § 218.01(3x) because Chapter 218 does not empower the Division to entertain constitutional questions.

In considering whether a determination of Kolosso's complaint by the Division could moot or change the posture of Chrysler's constitutional claim, I have come to the following conclusions. First, I disagree with Chrysler's position that "regardless of the substantive result, any application of § 218.01(3x) will result" in a violation of Chrysler's constitutional rights. (Chrysler Corporation's Reply Memorandum in Support of its Motion for Summary Judgment, p. 7) (*emphasis supplied*). Merely because the Wisconsin legislature has articulated its intent that § 218.01(3x) be retroactively applied, does not change the fact that the status quo remains intact — Kolosso has not attempted to relocate its dealership, *i.e.*, the SSA has not been breached. Moreover, by seeking licensure as a motor

vehicle manufacturer and distributor under the provisions of the MVDL, Chrysler knowingly subjected itself to Wisconsin's extensive regulation of Chrysler's relationship with Kolosso. Since its creation in 1937, the MVDL has changed and significantly expanded. (See *Forest Home Dodge, Inc. v. Karns*, 29 Wis.2d 78, 86 (1965); *Kuhl Motor Co. v. Ford Motor Co.*, 270 Wis. 488 (1955)). When Chrysler entered into the SSA with Kolosso, it knew that the subject matter of that contract had a history of heavy regulation by the State of Wisconsin. Therefore, Chrysler's assertions that the mere enactment and purported retroactive application of § 218.01(3x) have operated as an impairment of the SSA ring rather hollow.

Second, it is entirely possible that the Division could reject Kolosso's complaint and support Chrysler's denial of the relocation request. In other words, the Division could recognize the contractual limitations contained in the SSA regarding dealership relocation, and could bind Kolosso to them. Because the statute could be applied in a manner that is consistent with Chrysler's contractual rights, I conclude that a determination of relevant state law might render moot, or change the posture of, the federal constitutional question presented in the case.

In sum, I conclude that this case presents an unsettled issue of state law (specifically, whether the Division has jurisdiction to hear Kolosso's complaint). In addition, I conclude that a determination on the merits of Kolosso's complaint by the Division could moot or change the posture of Chrysler's federal constitutional claim. Based on these conclusions, I recommend that the district court abstain from entertaining Chrysler's declaratory judgment action pursuant to *Pullman*, 312 U.S. at 496.

2. *Colorado River* Abstention

Although neither Kolosso, nor the State of Wisconsin rely on the *Colorado River* doctrine of abstention, it is, in my

view, also applicable to the present case. In *Colorado River*, 424 U.S. at 821, the Supreme Court held that a federal court may abstain from exercising its jurisdiction and defer to a concurrent state proceeding when doing so avoids duplicative litigation.

Determining whether to abstain under *Colorado River*, involves a two-step inquiry. First, a court must determine whether the concurrent state and federal proceedings are "parallel." *Caminiti and Iaterola, Ltd. v. Behnke Warehousing, Inc.*, 962 F.2d 698, 700 (7th Cir. 1992). Two proceedings are "parallel" when "substantially the same parties are contemporaneously litigating substantially the same issues" in two different forums. *Id.* The parties involved in the proceeding before the Division are precisely the same parties involved in this federal action. Likewise, the issues at stake in both proceedings are identical. I, therefore, conclude that the proceedings are parallel.[4]

Having determined that the two proceedings are parallel, I must next weigh various factors identified in Colorado River, and its progeny, to see whether "exceptional circumstances" justify abstention. *Caminiti and Iatarola*, 982 F.2d at 700. These factors include:

> 1) whether the state has assumed jurisdiction over property; 2) the inconvenience of the federal forum; 3) the desirability of avoiding piecemeal litigation; 4) the order in which jurisdiction was obtained by the concur-

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[4] I note that the concurrent state proceeding in this case is not before a Wisconsin court, but rather, is before an administrative agency. However, the Wisconsin Division of Hearings and Appeals is an agency which is empowered to conduct quasi-judicial proceedings wherein an Administrative Law Judge issues findings of fact and conclusions of law. Ultimately, those findings and conclusions are subject to review by the Wisconsin courts. Under these circumstances, the fact that the concurrent state proceeding is administrative in nature does not alter my conclusion that the proceedings are parallel.

> rent forums; 5) the source of governing law, state or federal; 6) the adequacy of [the] state-court action to protect the federal plaintiff's rights; 7) the relative progress of state and federal proceedings; 8) the presence or absence of concurrent jurisdiction; 9) the availability of removal; and 10) the vexatious or contrived nature of the federal claim.

LaDuke v. Burlington Northern R.R. Co., 879 F.2d 1556, 1559 (7th Cir. 1989). No single factor is necessarily determinative, and the factors are not to be applied mechanically, but "flexibly and pragmatically." *Id.*

In my view, several factors weigh in favor of abstention. First of all, the fourth factor, *i.e.* the order in which jurisdiction was obtained by the concurrent forums, weighs in favor of abstention. This is because the proceeding before the Division was initiated prior to Chrysler's commencement of the federal action. Likewise, the seventh factor, *i.e.* the progress made in the two cases, also suggests that abstention is appropriate. Indeed, the parties had pursued mediation of Kolosso's complaint, as required by § 218.01(7m), prior to the commencement of the federal action.

The fifth factor, *i.e.* the source of governing law, as well as the sixth factor, *i.e.* the adequacy of the state action to protect the plaintiff's rights, weigh heavily in favor of abstention. Although some of the issues raised in Chrysler's federal complaint require the application of federal law, Chrysler's objection to the Division's jurisdiction is controlled by Wisconsin law. And, a determination of the merits of Chrysler's Contract Clause claim will require significant analysis of the MVDL, Wisconsin's long-standing regulation of the motor vehicle dealer-manufacturer relationship. With respect to the sixth factor, even assuming *arguendo* that the Division, as Chrysler claims, lacks the authority to consider its constitutional claims, the Division's decision is reviewable by the Wisconsin courts. And state judges have the power,

indeed the duty, to pass on questions of federal law that arise in cases properly brought in their courts. *Testa v. Katt*, 330 U.S. 386 (1947). The Wisconsin courts can determine the merits of Chrysler's Contract Clause if presented with that issue. *See Cousins v. Wigoda*, 463 F.2d 603, 607 (7th Cir. 1972).

The remaining factors are either inapplicable to the present case, or do not weigh either for or against abstention.

After consideration of all relevant factors, I conclude that there are exceptional circumstances which justify abstention under the *Colorado River* doctrine. In my opinion, resolution of the entire matter (including the jurisdictional question, the constitutional challenge, as well as the relocation dispute itself) is most efficiently and prudently handled in a Wisconsin forum, initially by the Division, and thereafter by the Wisconsin courts. I, therefore, recommend that the district court abstain from entertaining Chrysler's declaratory judgment action pursuant to *Colorado River*, 424 U.S. at 821.

CONCLUSION

I find that abstention is appropriate under both the *Pullman* doctrine and the *Colorado River* doctrine. In *LaDuke*, 879 F.2d at 1561-62, the Seventh Circuit held that a stay, rather than an outright dismissal, is the proper procedural mechanism to employ when deferring to a parallel state proceeding under the *Colorado River* doctrine. However in *Moses v. County of Kenosha*, 826 F.2d 708, 710 (7th Cir. 1987), the Seventh Circuit stated, "these doctrines [referring to the *Colorado River* and *Burford* doctrines of abstention] share with *Pullman* and *Younger* the characteristic that, when applicable, they require the district court to dismiss all claims without prejudice to the plaintiff's right to raise the same contentions in a state tribunal." This presents the court with the question of which step, stay or dismissal, is the proper step to take in this case.

Recently, the Supreme Court provided some guidance on this question. In *Quackenbush v. Allstate Insurance Co.*, --- U.S. ---, ---, 116 S.Ct. 1712, 1723 (1996), the Supreme Court held that:

> [I]n cases where the relief being sought is equitable in nature or otherwise discretionary, federal courts not only have the power to stay the action based on abstention principles, but can also, in otherwise appropriate circumstances, decline to exercise jurisdiction altogether by either dismissing the suit or remanding it to state court.

The court further noted that suits brought pursuant to the Declaratory Judgment Act are within the discretionary category that is subject to dismissal. *Id.* at 1722, 1728. This holding is consistent with other Supreme Court decisions which recognize the nature of a declaratory judgment action. (See, *e.g. Wilton v. Seven Falls Co.*, --- U.S. ---, ---, 115 S.Ct. 2137, 2143 (1995) (*citation omitted*); "We have repeatedly characterized the Declaratory Judgment Act as 'an enabling Act which confers a discretion on the courts rather than an absolute right upon [a] litigant;'" *Public Affairs Associates, Inc. v. Rickover*, 369 U.S. 111, 112 (1962); "The Declaratory Judgment Act was an authorization, not a command. It gave the federal courts competence to make a declaration of right; it did not impose a duty to do so.").

In the present case, the initial issue which must be decided, *i.e.* whether the Division has jurisdiction to hear Kolosso's complaint, unquestionably involves the application of Wisconsin law. Likewise, the second issue presented by this case, *i.e.* whether there is good cause to allow Kolosso to relocate its dealership, will entail applying newly created § 218.01(3x) to a dealer-manufacturer dispute for the first time. I have already concluded that a Wisconsin forum, *i.e.* the Division and thereafter the Wisconsin courts, is better suited to apply § 218.01(3x) in a manner that is consistent with Wisconsin's longstanding regulatory scheme. As

discussed above, Chrysler's Contract Clause claim only comes into play if the Division exercises jurisdiction pursuant to § 218.01(3x), and determines that Kolosso has good cause to relocate its dealership. Thus, the only constitutional issue presented by this case may never come to fruition. And, even if it does, Chrysler will have an opportunity to raise that issue, at the very least, before the Wisconsin Courts.

After careful consideration of the issues at stake, I see no reason why this court should retain jurisdiction over this case when, in the event Chrysler's Contract Clause claim arises (that is, in the event the Division approves Kolosso's relocation request), the Wisconsin courts are perfectly able to assess the merits of Chrysler's constitutional claim. Resolution of all of the relevant issues in a single proceeding is, in my opinion, the most efficient way to move this case forward. Given all of the above, I recommend that the district court issue an order dismissing this action without prejudice.

IT IS, THEREFORE, RECOMMENDED that the District Court abstain from entertaining this declaratory judgment action, pursuant to both *Railroad Comm'n of Texas v. Pullman Co.*, 312 U.S. 496 (1941) and *Colorado River Water Conservation Dist. v. United States*, 424 U.S. 800 (1976).

IT IS FURTHER RECOMMENDED that the District court enter an order dismissing this action without prejudice.

Any objection to this recommendation must be filed with the Clerk of Court, in duplicate, within ten days of service of the same. See Rule 73, Fed. R. Civ. P., and Local Rule 13.02 (E.D. Wis.). Failure to file a timely objection shall result in a waiver of your right to appeal all factual and legal issues.

Dated at Milwaukee, Wisconsin this 7th day of January, 1997.

/s/ William E. Callahan, Jr.

WILLIAM E. CALLAHAN, JR.
UNITED STATES MAGISTRATE JUDGE

APPENDIX D

UNITED STATES COURT OF APPEALS

FOR THE SEVENTH CIRCUIT

No. 97-3879

September 18, 1998

Before

Hon. Richard A. Posner, Chief Judge
Hon. Ilana Diamond Rovner, Circuit Judge
Hon. Diane P. Wood, Circuit Judge

CHRYSLER CORPORATION,

Plaintiff-Appellant,

v.

KOLOSSO AUTO SALES, INC.

Defendant-Appellee.

Appeal from the United States District Court
for the Eastern District of Wisconsin

Rudolph T. Randa, Judge

ORDER

On August 6, 1998, plaintiff-appellant filed a petition for rehearing with suggestion for rehearing *en banc* and on August 28, 1998, defendant-appellee filed an answer. All the judges on the original panel have voted to deny the petition, and none of the active judges has requested a vote on the suggestion for rehearing *en banc*. The petition is therefore DENIED.

APPENDIX E

WISCONSIN STATUTES

218.01. Motor vehicle dealers; salespersons; sales finance companies, licenses; fees; regulations; coercion; subsidies; penalties

* * *

(3x) Dealership changes. (a) In this subsection, "affected grantor" means a manufacturer on direct dealerships, a distributor on indirect dealerships or an importer on direct dealerships that has entered into an agreement with a motor vehicle dealer and that is directly affected by an action proposed to be undertaken by the dealer under this subsection.

(b) 1. If a motor vehicle dealer's agreement with an affected grantor requires the grantor's prior approval of an action proposed to be undertaken by the dealer under this subsection, a dealer may not voluntarily change its ownership or executive management, transfer its dealership assets to another person, add another franchise at the same location as its existing franchise or relocate a franchise without giving prior written notice of the proposed action to the affected grantor and to the department of transportation. Within 20 days after receiving the notice, the affected grantor may serve the dealer with a written list of the information not already known or in the possession of the grantor that is reasonably necessary in order for the grantor to determine whether the proposed action should be approved. The grantor shall, in good faith, confirm in writing to the dealer the date on which it has received from the dealer or from other sources all the information specified on the list.

2. An affected grantor who does not approve of the proposed action shall, within 30 days after receiving the dealer's written notice of the proposed action or within 30 days after receiving all the information specified in a written

list served on the dealer under subd. 1., whichever is later, file with the department of transportation and serve upon the dealer a written statement of the reasons for its disapproval. The reasons given for the disapproval or any explanation of those reasons by the manufacturer, distributor or importer shall not subject the manufacturer, distributor or importer to any civil liability unless the reasons given or explanations made are malicious and published with the sole intent to cause harm to the dealer or a transferee of the dealer. Failure to file and serve a statement within the applicable period shall, notwithstanding the terms of any agreement, constitute approval of the proposed action by the grantor. If an affected grantor files a written statement within the applicable period, the dealer may not voluntarily undertake the proposed action unless it receives an order permitting it to do so from the division of hearings and appeals under par. (c)2.

3. A dealer who is served with a written statement by an affected grantor under subd. 2. may file with the department of transportation and the division of hearings and appeals and serve upon the affected grantor a complaint for the determination of whether there is good cause for permitting the proposed action to be undertaken. The division of hearings and appeals shall promptly schedule a hearing and decide the matter. The proposed action may not be undertaken pending the determination of the matter.

(c) 1. In determining if there is good cause for permitting a proposed action to be undertaken, the division of hearings and appeals may consider any relevant factor including:

a. The reasons for the proposed action.

b. The affected grantor's reasons for not approving the proposed action.

c. The degree to which the inability to undertake the proposed action will have a substantial and adverse

effect upon the motor vehicle dealer's investment or return on investment.

d. Whether the proposed action is in the public interest.

e. The degree to which the proposed action will interfere with the orderly and profitable distribution of products by the affected grantor.

f. The impact of the proposed action on other motor vehicle dealers.

2. The decision of the division of hearings and appeals shall be in writing and shall contain findings of fact and a determination of whether there is good cause for permitting the proposed action to be undertaken. The decision shall include an order that the dealer be allowed or is not allowed to undertake the proposed action, as the case may be. The order may require fulfillment of appropriate conditions before and after the proposed action is undertaken.

(d) This subsection does not apply to:

1. An action that has been agreed to in writing between a dealer and each affected grantor.

2. A proposed action that would require an affected grantor to give notice under sub. (3)(f)1, except that the dealer must have the affected grantor's written approval before undertaking any such proposed action.

3. The exercise by an affected grantor under an agreement of the right of first refusal to acquire the dealer's assets in the event of a proposed change of ownership or transfer of dealership assets, if all of the following requirements are met:

a. The exercise of the right of first refusal will result in the dealer and the dealer's owners receiving the same or greater consideration as they have contracted to

receive in connection with the proposed change of ownership or transfer of dealership assets.

b. The proposed change of ownership or transfer of dealership assets does not involve the transfer of assets or the transfer or issuance of stock by the dealer or one or more dealer owners to one or more immediate family members of one or more dealer owners or to a qualifying member of the dealer's management or to a partnership, limited liability company or corporation controlled by such persons. In this subd. 3.b., "immediate family member" means the spouse, child, grandchild, spouse of a child or grandchild, brother, sister or parent of the dealer owner; and "qualifying member of the dealer's management" means an individual who has been employed by the dealer for at least 2 years and who otherwise qualifies as a dealer operator.

c. The affected grantor agrees to pay the reasonable expenses, including reasonable attorney fees that do not exceed the usual, customary and reasonable fees charged for similar work done for other clients, incurred by the proposed new owner or transferee before the grantor's exercise of its right of first refusal in negotiating and implementing the contract for the proposed change of ownership or transfer of dealership assets. Notwithstanding this subd. 3.c., no payment of expenses and attorney fees shall be required if the dealer has not submitted or caused to be submitted an accounting of those expenses within 7 days after the dealer's receipt of the affected grantor's written request for an accounting.

4. An action, if a proposed new owner or transferee does not agree to comply with the agreement between the affected grantor and dealer or with a new agreement containing substantially the same terms.

APPENDIX F

RULE 29.6 DISCLOSURE

Pursuant to Supreme Court Rule 29.6, the following is a list of the nonwholly owned subsidiaries of petitioner DaimlerChrysler Corporation.

1981 Helicopters Ltd.

104462 Canada Ltd.

2813009 Canada Inc.

2813017 Canada Inc.

2813025 Canada Inc.

A.C. Austro Car Handelsgesellschaft m.b.H.

Adelaide FSC, Ltd.

Advanced Leasing Services Number 3, Inc.

AIA, Inc. of Pennsylvania

Aire y Temperatura S.A. Colonia Anahuac

Alice Springs Ltd.

American Auto Handels G.m.b.H.

American Auto Receivables Company

American Motors (Canada) Inc.

American Motors Pan American Corporation

Anaheim Dodge, Inc.

Arab American Vehicles Company

Artesia Turbine Cogeneration Corporation

Auto/Oil Air Quality Improvement Research Program

Auto Receivables Corporation

Autohaus Havelstrasse G.m.b.H

Automotive Exporters Inc.

Automotive Financial Services, Inc.

Automotive Polmer-Based Composites Joint Research and Development Partnership

Baltimore Compost I Corporation

Baltimore Compost II Corporation
Becker Auto-Technic G.m.b.H.
Beijing Jeep Corporation, Ltd.
Boulevard Dodge Chrysler (1991) Inc.
Bramco Satellite Inc.
CAD/CAM Partnership
Capital Plymouth Chrysler, Inc.
Cara FSC Ltd.
CC Funding Corporation
CF Holding G.m.b.H.
Chase Securities Japan Limited
Chrysler (Taiwan) Co., Ltd.
Chrysler Argentina, S.A.
Chrysler Asia-Pacific Pte. Ltd.
Chrysler Asset Management Corporation
Chrysler Australia Pty. Ltd.
Chrysler Austria Ges. M.b.H.
Chrysler Auto Receivables Company
Chrysler Automobilvertrieb G.m.b.H.
Chrysler Automotive Services GmbH
Chrysler Bank GmbH
Chrysler Belgium Luxembourg S.P.R.L.
Chrysler Cadre Inc.
Chrysler Canada Ltd.
Chrysler Capital Corporation
Chrysler Capital Financing Corporation
Chrysler Capital Fund Management Corporation
Chrysler Capital Funding Corporation
Chrysler Capital Investment Services, Inc.
Chrysler Capital Public Finance Corp.
Chrysler Capital Realty II, Inc.

Chrysler Capital Realty Inc.
Chrysler Capital Transportation Services, Inc.
Chrysler Chile Importadora L.L.C.
Chrysler Comercial S.A. de C.V.
Chrysler Commercial Leasing Corporation
Chrysler Concord Corporation
Chrysler Consortium Corporation
Chrysler Corporation Fund
Chrysler Credit Canada Ltd.
Chrysler Credit de Puerto Rico N.V.
Chrysler Credit Holdings Ltd.
Chrysler Credit Realvest Inc.
Chrysler de Mexico S.A.
Chrysler de Venezuela, L.L.C.
Chrysler Do Brasil Ltda.
Chrysler Dunwoody, Inc.
Chrysler Egypt Limited
Chrysler Engineering S.A.
Chrysler Europe S.A.
Chrysler Factoring, S.A. de C.V.
Chrysler Finance Limited
Chrysler Financial Corporation
Chrysler Financial Financing Corporation
Chrysler Financial France S.A.
Chrysler Financial Japan Limited
Chrysler Financial Overseas Capital N.V.
Chrysler Financial Receivables Corporation
Chrysler Financial Taiwan Co., Ltd.
Chrysler Finanical Bank B.V.
Chrysler Finanziaria Italia S.p.A.
Chrysler Finland OY

Chrysler First Acceptance Corporation
Chrysler First Business Credit Corporation
Chrysler First Commercial Corporation
Chrysler First Consumer Discount Company
Chrysler First Financial Services Corporation of Florida
Chrysler First Financial Services Corporation of America
Chrysler First Inc.
Chrysler First Industrial Loan Company
Chrysler First Mortgage Corporation of Florida
Chrysler Foreign Sales Corporation
Chrysler France SAS
Chrysler Glenview Corporation
Chrysler Import Belgium S.P.R.L.
Chrysler Import Deutschalnd G.m.b.H.
Chrysler Import Holland BV
Chrysler Institute of Engineering
Chrysler Insurance Company
Chrysler International Corporation
Chrysler International Limited LLC
Chrysler International S.A.
Chrysler International Services S.A.
Chrysler Italia S.R.L.
Chrysler Japan Sales Limited
Chrysler Korea Sales Limited
Chrysler Leasing Corporation
Chrysler Leasing G.m.b.H.
Chrysler Life Insurance Company of Canada
Chrysler Life Insurance Company
Chrysler MacNally Corporation
Chrysler Management Services G.m.b.H.
Chrysler Mauritius International Company

Chrysler Meadowcroft Corporation
Chrysler Meridian Corporation
Chrysler Motors Corporation
Chrysler Motors de Venezuela, S.A.
Chrysler Natural Resources Development Corporation
Chrysler Nederland B.V.
Chrysler Overseas Trading Company Ltd.
Chrysler Pentastar Aviation, Inc.
Chrysler Rail Transportation Corporation
Chrysler Realty Corporation
Chrysler RRPF (UK) Limited
Chrysler Sales and Services (Thailand) Ltd.
Chrysler Service Contracts, Inc.
Chrysler Servicios Corporativos, S.A. de C.V.
Chrysler Technologies Middle East Ltd.
Chrysler Timberlake Corporation
Chrysler Transport, Inc.
Chrysler Versicherungsdienst
CID Kredietbank G.m.b.H.
CID Software G.m.b.H.
CISA Financial Services S.A.
Classic Chrysler Center, Inc.
CLG Media, Inc.
CLG Media of Jackson, Inc.
Clinton Holding Corporation
Compania Importadora, S.A.
Conemaugh Hydroelectric Projects, Inc.
Courtesy Dodge Chrysler (1998) Inc.
Cross Lane Properties, Inc.
Cross Road Chrysler Plymouth, Inc.
Dartmouth Dodge Chrysler (1991) Inc.

Dealer Capital, Inc.

Distribuidora Automotriz Interlomas, S.A. de C.V.

Dominion Chrysler Plymouth, Inc.

Dominion Chrysler-Plymouth, Inc.

Downriver Dodge, Inc.

East Tulsa Dodge, Inc.

Edmonda Dodge, Inc.

EFH Leasing Corporation

Electrical Wiring Component Application Partnership (EWCAP)

Emily FSC Ltd.

Ensambladora Carabobo, C.A.

Environmental Science Research Consortium

EPC Corporation

Eurostar Automobilwerk Ges. m.b.H.

Eurostar Automobilwerk Ges. m.b.H. & Co. KG

Fourfold Cogeneration Corporation

FPB California Cogeneration Corporation

Fresno Biomass Power Corporation

Fundacion Chrysler Mexico, IAP

Grupo Chrysler de Mexico

Hacogen Corporation

Halifax Chrysler Dodge (1989) Ltd.

Harper Lake IX, L.P.

Harper Lake Solar Partners IX Corporation

Hartford Turbine Cogeneration Corporation

HCCF Corporation

High Speed Serial Data Communications Research and Development Partnership

Hilltop Dodge Sales, Inc.

HLLSLC Corporation

HLSP IX, Inc.
Inmuebles Chrysler de Mexico, S.A. de C.V.
International Motors & Management, S.A.M.
Jasmin EOR Cogeneration Corporation
Jean Talon Plymouth Chrysler (1988) Ltee
Jeep Australia, Pty., Ltd.
Jeep Caracas, S.A.
Jeep of Canada Limited
Kingswood Chrysler-Plymouth, Inc.
Kirkland Chrysler Plymouth Jeep Eagle, Inc.
Klair, Ltd.
La Brea Avenue Motors, Inc.
Lauren 90 Corporation
Laurissa 85 Corporation
Lexington Park Motors
Low Emissions Paint Research and Development Partnership
Low Emissions Technologies Research and Development Partnership
Macon Chrysler Plymouth, Inc.
Marine Asset Management Corporation
Marine Plymouth Chrysler Ltd.
Marisa, Inc.
Mathilda FSC Ltd.
Michigan Materials and Processing Institute
Midfield Dodge, Inc.
Natural Gas Vehicle Technology Partnership
New Canaan Road Holdings, Inc.
New Venture Gear, Inc.
Niagara Turbine Cogeneration Corporation
OAM S.p.A

Ormesageo 1E Geothermal Corporation
Pasir Puteh Ltd.
Pentastar Insurance Agency, Inc.
Perth Ltd.
Porterville Chrysler Center, Inc.
Poso EOR Cogeneration Corporation
Premier Auto Receivables Company
Premier Receivables L.L.C.
Public Warehouse Europe BV
RAE Hotel Corporation
Rambler Motors (AMC) Limited
Redisco Canada Ltd.
Rocklin Biomass Power Corporation
Ross Park Dodge, Inc.
Royal Dodge, Inc.
South Gate Chrysler Plymouth Jeep Eagle, Inc.
South Trail Plymouth Chrysler Ltd.
Southland Chrysler Plymouth Jeep Eagle, Inc.
Southland Chrysler Products, Inc.
Sovereign Crest Properties Inc.
Stamford Holdings No. 2, Inc.
Stillwater Geothermal Corporation
Stoneridge Motors, Inc.
Suffolk Leasing, Inc.
Super Computer Automotive Applications Partnership
Team Chrysler Dodge, Inc.
Thai Chrysler Automotive Limited
Toquam Properties, Inc.
Tritec Motors Ltda.
Trona Cogeneration Corporation
TTC Corporation

U.S. Auto Receivables Company

UMB Properties, Inc.

Union City Chrysler-Plymouth, Inc.

United States Advanced Battery Consortium

United States Automotive Materials Partnership

United States Automotive Occupant Safety Research Partnership

Upper Darby Chrysler-Plymouth, Inc.

Vehicle Recycling Partnership

Webster Chrysler Center, Inc.

West Liberty Dodge, Inc.

Westover Holdings, Inc.

Whitewater Holdings, Inc.

Wilson Street Holdings, Inc.

Yonge and 7 Plymouth Chrysler Inc.